

1 COOLEY GODWARD KRONISH LLP  
MICHAEL G. RHODES (116127) (rhodesmg@cooley.com)  
2 OLEG CROSS (246680) (ocross@cooley.com)  
4401 Eastgate Mall  
3 San Diego, CA 92121  
Telephone: (858) 550-6000  
4 Facsimile: (858) 550-6420

5 Attorneys for Defendant  
PAYPAL, INC.

8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION

12 B. DAVID MEHMET,

13 Plaintiff,

14 v.

15 PAYPAL, INC.,

16 Defendant.

Case No. 5:08-cv-01961-RMW-RS

**DEFENDANT PAYPAL, INC.'S NOTICE OF  
MOTION AND MOTION FOR A  
PROTECTIVE ORDER RE: PLAINTIFF'S  
ATTEMPT TO DEPOSE SCOTT  
THOMPSON, JOHN D. MULLER, AND  
MARY M. HENTGES**

DATE: April 1, 2009  
TIME: 9:30 a.m.  
CTRM: 4, Fifth Floor  
JUDGE: Hon. Richard Seeborg

19 **NOTICE OF MOTION AND MOTION**

20 **PLEASE TAKE NOTICE** that on April 1, 2009 at 9:30 a.m., in Courtroom 4, Fifth Floor, of  
21 the above-entitled Court, located at 280 South 1st Street, San Jose, California, Defendant PayPal,  
22 Inc. ("PayPal") will and hereby does move the Court for a protective order prohibiting the  
23 depositions of PayPal executives: Scott Thompson, President; John D. Muller, PayPal's Vice  
24 President of Legal Services and General Counsel; and Mary M. Hentges, its Chief Financial  
25 Officer ("CFO"). This motion is made on the grounds that good cause exists to prevent the  
26 deposition of the Mr. Thompson, Mr. Muller, and Ms. Hentges because Plaintiff has failed to first  
27 use less intrusive means to obtain information sought by the deposition of these high-ranking  
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1 officers, and because these officers do not have personal knowledge of the facts relevant to this  
2 case.

3 PayPal makes this Motion based on this Notice of Motion and Motion, the accompanying  
4 Memorandum of Points and Authorities, the Declaration of Oleg Cross, the pleadings and records  
5 on file herein, and such other matters as the Court deems necessary or appropriate. PayPal  
6 respectfully submits that no oral argument is necessary for this motion. In addition, PayPal  
7 makes this motion following conferences by parties that took place on February 26, 2009  
8 regarding the noticed hearing date pursuant to the San Jose Division Standing Order Regarding  
9 Case Management in Civil Cases.

### 10 **MEMORANDUM OF POINTS AND AUTHORITIES**

#### 11 **I. INTRODUCTION**

12 PayPal, Inc. (“PayPal”) is a global leader in online payments solutions with more than 153  
13 million accounts worldwide.<sup>1</sup> Plaintiff B. David Mehmet (“Plaintiff”) has a PayPal account and  
14 here sues PayPal in connection with transactions made using that account.

15 Plaintiff’s Verified Amended Complaint (“AC”) alleges eleven causes of action and seeks  
16 damages in excess of \$10 million. In reality, however, this is a simple case with relatively low  
17 disputed monetary value, if any. In essence, Plaintiff’s allegations boil down to the following:  
18 PayPal improperly suspended his money transfers in the amount of \$1,950 before releasing them  
19 (*See, e.g.*, AC ¶¶ 21, 24, 25) and sent an e-mail, which Plaintiff contends is false and defamatory.  
20 (*See, e.g.*, AC ¶¶ 13-14.) PayPal’s motion to dismiss eight of eleven causes of action in the  
21 Complaint is currently pending before the Hon. Ronald M. Whyte. (*See* Doc. # 28 & 45.)

22 In the meanwhile, Plaintiff has noticed the following four depositions: (1) Scott  
23 Thompson, PayPal’s President (for April 6, 2009), (2) John D. Muller, Vice President of Legal  
24 Services and General Counsel (for April 7, 2009), (3) Mary M. Hentges, Chief Financial Officer  
25 (April 8, 2009) and (4) the PayPal employee who allegedly wrote the false or defamatory e-mail  
26 or alternatively a FED. R. CIV. P. 30(b)(6) designee (April 14, 2009). PayPal agrees to a

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27 <sup>1</sup> See <http://www.paypal.com/cgi-bin/webscr?cmd=p/gen/about-outside> (last visited on February  
28 23, 2009).

1 deposition of PayPal's FED. R. CIV. P. 30(b)(6) designee (noticed for April 14, 2009).

2       However, the above high-ranking corporate officers of PayPal (President, CFO, and  
3 General Counsel) have no personal knowledge of the facts relevant to this case, including  
4 Plaintiff's accounts, the reasons his money transfers were suspended, or the allegedly false and  
5 defamatory e-mail at issue. Furthermore, Plaintiff has failed to first use less intrusive means to  
6 obtain information sought by their depositions, such as a FED. R. CIV. P. 30(b)(6) deposition. For  
7 these reasons, PayPal seeks a protective order pursuant to FED. R. CIV. P. 26(c).

## 8       **II.     LEGAL STANDARD**

9       The Federal Rules of Civil Procedure authorize district courts to protect targets of  
10 discovery from "annoyance, embarrassment, oppression, or undue burden or expense." FED. R.  
11 CIV. P. 26(c). District courts may also direct that "the discovery may be had only by a method of  
12 discovery other than that selected by the party seeking discovery." FED. R. CIV. P. 26(c)(3).

## 13       **III.    ARGUMENT**

14       When a party seeks to take the deposition of an official at the highest level or "apex" of a  
15 corporation, the court may exercise its authority under the federal rules to limit discovery. This is  
16 especially so where, as here, the high-level corporate executive lacks unique or superior  
17 knowledge of the facts in dispute. *Thomas v. Int'l Bus. Machines*, 48 F.3d 478, 482 (10th Cir.  
18 1995) (affirming grant of protective order preventing plaintiff from deposing Chairman of the  
19 Board of Directors of IBM in connection with a wrongful termination lawsuit by a former clerical  
20 employee); *Lewelling v. Farmers Ins. of Columbus, Inc.*, 879 F.2d 212, 218 (6th Cir. 1989)  
21 (affirming grant of protective order preventing plaintiff from deposing the CEO and Chairman of  
22 the Board of Farmer Group, Inc.).<sup>2</sup>

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24 <sup>2</sup> See also SCHWARZER, TASHIMA & WAGSTAFFE, CAL. PRACTICE GUIDE: FED. CIV.  
25 PRO. BEFORE TRIAL [¶] 11:345.5 (The Rutter Group 2002) ("The CEO of a corporation ...  
26 may obtain a protective order from being deposed about matters as to which he or she has no  
27 personal knowledge. This prevents use of depositions for harassment purposes and protects such  
28 persons from the interference of the discovery process."); *Mulvey v. Chrysler Corp.*, 106 F.R.D.  
364 (D.C. R.I. 1985) (Virtually every court that has addressed deposition notices directed at an  
official at the highest level or "apex" of corporate management has observed that such discovery  
creates a tremendous potential for abuse or harassment.).

1 In addition, courts have refused to allow immediate depositions of “apex” deponents  
2 before the testimony of lower level employees with more intimate knowledge of the case has been  
3 secured. *See Salter v. Upjohn*, 593 F.2d 649, 651 (5th Cir. 1979) (granting protective order for  
4 executive where plaintiff had sought to depose the president of the company before deposing  
5 lower level executives); *Baine v. General Motors Corp.*, 141 F.R.D. 332 (M.D. Ala. 1991)  
6 (granting protective order for Vice President of General Motors where plaintiff had failed first to  
7 depose lower level employees).

8 Here, *the very first three depositions* Plaintiff attempts to take are those of PayPal’s  
9 President, General Counsel, and CFO. Plaintiff has failed to utilize less intrusive methods of  
10 discovery before attempting to conduct these depositions. The only other deposition Plaintiff has  
11 noticed – that of the PayPal employee who supposedly drafted the allegedly false and defamatory  
12 e-mail or in the alternative a Fed. R. Civ. P. 30(b)(6) designee (noticed for April 14, 2009) is  
13 scheduled *after* the depositions of the above-referenced high-ranking corporate officials.  
14 Furthermore, none of these high-ranking corporate officers have any knowledge – much less  
15 unique or superior knowledge – of facts relevant to this case.

16 Plainly, the above high-ranking executives should be spared the distraction and burden of  
17 the depositions in this case where: (1) Plaintiff has not first attempted to secure discoverable  
18 information from lower-level employees; and (2) these high-ranking officers do not have even a  
19 modicum of relevant information about this low-level, run-of-the-mill dispute.

#### 20 **IV. CONCLUSION**

21 For all these reasons, PayPal respectfully asks that the Court issue a protective order  
22 prohibiting the depositions of Scott Thompson, John D. Muller, and Mary M. Hentges. In the  
23 alternative, PayPal requests that the Court order these depositions to be postponed until after the  
24 Fed. R. Civ. P. 30(b)(6) deposition and upon showing that depositions of these officers could  
25 yield demonstrably relevant information. Finally, and yet again in the alternative, PayPal  
26 requests that the Court issue a protective order postponing the deposition of the above executives  
27 until after the Court rules on the currently pending motion to dismiss.

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Dated: February 26, 2008

COOLEY GODWARD KRONISH LLP  
MICHAEL G. RHODES (116127)  
OLEG CROSS (246680)

/s/ Oleg Cross  
Oleg Cross  
Attorneys for Defendant  
PAYPAL, INC.